App. F. IX-4.

8-HP

1924.

Previous references. (4 T.)

File No. 40-24

Serial Nos. 1 – 5

Later references. M 1-15

GENERAL AND REVENUE SECRETARIAT.

Serial No

Part B for June 1925

SUBJECT

Regarding the question whether Royalties paid by Mining Companies should be considered as Revenue Expenditure ..

G. R. S. 11] 1915

GENERAL AND REVENUE SECRETARIAT.

(9T)

NOTES.

File No. 91-25

FILE HEADING.

Regarding the question whether Royalties paid by Mining Companies should be Considered as Revenue expenditure

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

P.T.O

NOTES—First Sheet.

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

22/29
re

D.O. dt 17.12.24 from the Govt. Advocate forwarding copy of a letter from the Secy, Central Board of Revenue on the question whether Royalties paid by mining Companies should be considered as revenue Expenditure or not.

Orders of the 2nd member.

The file relating to the case relating to I.T on royalty may be put up & submd.

(Sd) K. R. S.
18/12.

It is understood that the file relating to the United Steel company was returned with the opinion of the L.L. Secy last week & has since been submd. to the Dewan.

3) Copy of Central Board of Revenues' letter has also been sent by the Executive Council and it is being separately dealt with

W
19/12

2nd Member

20/12/24

554
20.12

4) This may be submitted for perusal of the Dewan

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

2295

3.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

In view of this we may not
if it is proper for consideration
whether we may not please
to proceed under either of Sections
dealing respectively with the ~~question~~
of income tax on royalty,
or income. If we
decide to do so, it will
be necessary to have the
matter entered on the
Chief. Court & the Engagt and
instruct Counsel for the purpose
& will decide if to be done as
the last Counsel must

DEWANS OFFICE.
22 DEC 1924
45-53.

royalty is on
what basis
is it
Please
let us
know

23-12-

Ans. to C.

A royalty of 5% "upon the sale
proceeds of gold metallic ores
and other substances of a saleable
or merchantable nature found on the mining
block which shall have been crushed dressed
and made merchantable by the Lessees"
is levied under clause 7 the mining lease

N.B Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

U.R.S. III—3]

4997

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

---

and also a royalty of 2½ percent
upon the amount of all
dividends from whatever source
derived as and when
declared and made
payable by the lessees
to their shareholders"
under clause 9 of the lease.

A Synopsis and full
note as the question of Royalty
on gold should be treated
for purposes of income tax
is under submission.

6/1/25

Rev Surv

Accn

DEWAN'S OFFICE
[illegible] JUL 1925
4962

10 JAN 1925

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

2262

Letter no. C 325 of 17.12.24 from the Comm^r of Income Tax, ~~Kolar Dt~~ requesting orders on the question as to whether royalties paid to Govt are to be regarded as a deductible item of expenditure under the I.T. Act^n

Cited. This question is being separately considered.

2. A reference in the matter is pending decision in the Chief Court

(Re United Steel Company Ltd, Shimoga)

W.H. 18/12

3. The question whether royalty paid to Govt on manganese ore won from mining and leasehold areas in mysore was is an item of working expense in respect of which depn^ allowances should be made or not under the Mysore Income Tax Regulation has been raised by the United Steel Co Branch at Shemoga in connection with the of assessment of the As income to income tax

*N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form

G.R.S. III—3] V

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

This Company first submitted
a return of income without
claiming any deduction
from its taxable income
on account of sums of
money paid as royalty
to Govt, but it subsequently
put forward a claim for
an allowance on that account
which was rejected by the
Dy Comr of I.T. Shimoga and
subsequently on appeal by
the Commissioner of Income
Tax at whose instance
Dy Comr of Shimoga also ~~[illegible]~~ formally
dismissed it. ~~As the Company~~ AL 1
~~for~~ the Company which was not
satisfied with this decision
a Statement of the case ~~[illegible]~~
has been made to the Chief
Court by the Commissioner of Income Tax

P.S. Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

G. R. S. III-2]

WD 2310—GPP—10,000—31-5-24

General and Revenue Secretariat | File No. of 19 .

Serial No.

referring for its decision the question whether royalty paid to Govt is an item of expenditure incurred in earning profit in respect of which deduction has to be allowed in computing income assessable to income tax — the Case is posted for hearing on the 21st instant — and the decision of the Chief Court will give an authoritative ruling on the question from a legal point of view for future guidance

4. It was evidently in this connection that the Income Tax Court enquired of the Dy Comr of Kolar whether royalty paid to Govt by the Kolar Gold Mining Companies is included in the taxable income of those Companies — and the Dy Comr replied that it was not so included. The D. J. Comr then took it that the Dy Comr that the question had been referred to the Chief Court for decision in the Case relating to the manganese mines in Shimoga and pending the decision of the Chief Court on the order of assessment in the Case of the mining Companies

C

may be passed as in last year ~~etc~~
Subject however to such ~~Modification~~
revision later on under Section 35 (1) or 34 of
the I.T. Regulation as the Chief Court
decision may necessitate. The Dy
Comr was however of the opinion that
as all the Gold Mining Companies' cases
were ready for assessment, Govt would
stand to lose a great deal by every days'
delay, the amount of tax this year being
over 8 Lakhs as reported by him in his
letter of 3.11.24 to the I.T. Comr. [It was
informally understood from the
Comptroller's office that a sum of
about 4 ¼ Lakhs has already been
received to the credit of the Govt account
with the Imperial Bank of India, Bangalore.
Full details of demands received & yet
to be received on this account have
also been called for from the I.T Comr. (letter issued
today]. on 8.1.25)

and he has therefore proceeded to tax the Companies following "the mamool" and he has left it to the Comr to take action to revise his assessment if he should consider it necessary vide Kolar D/c's letter No D.C 130/24 dt 24.11.24 to I.T. Comr

Flag C

5. In reporting to Govt the action taken by the Dy Comr of Kolar in the matter, the I.T. Comr seeks orders of Govt ~~on the point under disposal~~ on the question whether royalties paid to Govt are to be regarded as deductible item of expenditure in arriving at the income from business under Section 10 of the Regulations. In doing so, the Comr has referred to the case of the Mysore Steel Co which is now before the Chief Comr

Papers under disposal

Serial No.

and also the practice reported to prevailing in British India. The Commissioners ascertained from the Central Board of Revenue in British India that

"if the royalty in question is based on mere output & has to be paid irrespective of whether the Company makes a profit or not it would be treated in British India as an expenditure incurred solely for the purpose of earning such profits or gains within the meaning of Section 10 (2) (x) of the Indian Income Tax Act, 1922. If on the other hand the royalty depends in any manner upon the profits made by the Company such royalty would be considered the expenditure incurred for the purpose of earning such profits and would therefore be not allowed as a deduction from the income

6. Royalty on gold is levied in the following manner

(1) a royalty of 6% per cent upon the sale proceeds of all gold metallic ores and other substances of a saleable or merchantable nature found on the mining blocks which shall have been crushed dressed and made merchantable by the lessees (vide clause 7 of mining lease terms)

NOTE—Contd. Sheet

Serial No.

(2) a royalty of 2½ per Cent upon the amount of all dividends from whatever Source derived as and when declared and made payable by the lessees to their Shareholders" (Vide clause 9 of the lease)

If the Govt of India proceeds to act as followed without discussing the principle involved in it, a doubt has been allowed in the Case of the 5 per Cent royalty levied on the Sale proceeds of metallic ores etc but not on the 2½ per Cent royalty payable on dividends declared & paid by the mining Companies.

7. It is difficult to understand on what principle the practice of the Govt of India in respect of the 5 pc royalty on Sale proceeds of ore is based. It is said that such royalty should be treated in British India as expenditure incurred solely for the purpose of earning profits or gains within the meaning of such words of the Income Tax Act. It is doubtful if it can be regarded as such merely because of the fact that this royalty is levied irrespective of the fact that the Companies have made a profit or not. Of late the Rule in the Income Tax Act that

NOTE—Contn. Sheet.

Serial No.

"expenditure incurred solely for the "purpose of earning profits or gains" (clause (ix) of clause (c) of Section 10) is subject to the condition that the expenditure should not be of the nature of "Capital expenditure" This condition is imposed because of the fact that every capital expenditure is incurred with a view to earn profit. And the only difference between Capital and "Income" (or Revenue) expenditure is that whereas in the latter case the expenditure is incurred with a view to earn profits in the year in which it is incurred in the latter case it is not for earning profits for any one particular year but it is of the kind that will help to earn profits for all years to come. All capital expenditure is of this sort. If in this case the land leased out for mining had been purchased outright, the price paid would be Capital expenditure of the sort described above. The mere facts that the price is lump sum & Complete ownership of the land is not taken but only such ownership as is necessary to extract gold so long as the land yields gold

NOTE—Contn. sheet.

~~of alter~~ and that the price paid for this limited or partial ownership is paid annually for a fixed period instead of once for all, do not alter the nature of the expenditure which ~~is not a matter of Capital~~ comes under the class of ~~Cap~~ Capital. As a measure of prudent management, Companies may write off this Capital expenditure every year from their Revenue, but it is none the less Capital expenditure for purposes of Income tax and cannot be deducted.

5. The matter ~~being~~ has been referred to the Chief Court and ~~there~~ in its decision may be awaited. Whether that decision will be in accordance with the views expressed above or not, there is no doubt whatever, even according to the Govt of India practice that ~~under~~ the 2½ per cent royalty on dividends does not admit of being deducted from ~~profits~~ and has to be included in the profits assessable to Income tax. The Income Tax Dept may therefore be asked to issue necessary

G. R. S. III-2]

WD 2810—GPE—10,000—31·5·24

General and Revenue Secretariat	File No.	of 19

Serial No.

instructions to Compute profits for the year including this item for the assessment now to be made for the year 1924-25 and also ~~for 1923-24 under~~ to take action under Sec 34 to re-assess the tax due for 1923-24

9. Admit reply to the D.J. Court is put up for approval.

11/4/25

Rev Secy)
10 I entirely agree with the Asst Secy—

11 Draft is put up

15/4/25

326/16 11

16/4/25

12 I shall be known when he can begin his cross-examination is posted for hearing. The may be obtained from the Govt advocate.

18/4

19/4

13 Draft Submitted

19/4 14 20/4/25

Signed no. 7L 4461 20.1.28

NOTE—Contn. sheet.

General and Revenue Secretariat. | File No. 2692 (10) of 19 .

Serial No.

From The Comm^r of Income Tax
No. C 200 dt 19.1.25

Forwards copy of a letter from the Comm^r of Income Tax in Madras, stating that the royalty paid by the Mica Mining Company direct to Govt. is allowed as a deduction under Section 10(2)(ix) of the Act.

From
The Same office
No. 20.53 dt 21.1.25
Intimates that the case stands posted to 11th Feb.

15 Subd. for information. The G.J. Court has not yet reported the date on which the Case of Shimoga Company is fixed for hearing. It has been informally ascertained that the I.T. reference of the United Steel Company, Shimoga is posted for hearing, before the Chief Court, to the 11th Febr 1925.

479 22-1-25 WW 24/1

2nd member) vide 22/1/25

16 This may be sent for the opinion of the A.G. & A.G. Secy.

17 On receipt of the opinion of the Advocate General & Madras on the question in dispute, I hope it will be put before the End of the month or the later.

23/1

24.1.

16) A.G. Secy with Compts 24/1/25

17) Rev Secy 2nd Compts

24-1.

Secy

Secy 26/1/25

NOTE—Contn. Sheet

1857 24/1

(Vide file linked for further action)

ROUTINE NOTES.

(2) Question of allowing deduction to be made for royalty from the profits of the Mining Companies for the purpose of assessing income-tax.

This question is now before the Chief Court on the reference made by the Income-tax Commissioner in connection with the assessment of the United Steel Company of Shimoga. Mr. Alladi Krishnaswamy Iyer of Madras has been engaged by Government to appear along with the Government Advocate before the Chief Court in the case. If the decision of the Chief Court is in favour of Government, action will have to be taken for assessing the Gold Mining Companies on the - - royalties recovered from them in respect of which no income-tax is now being recovered. Even if the decision of the Chief Court in the case of the United Steel Company were to go against the Government, the Gold Mining Companies will have to be asked to pay assessment in respect of the royalty on net profits in accordance with the practice in force in British India. I have personally spoken to the Income-tax Commissioner asking him to take necessary action both in this case as well as in the case of Messrs. John Taylor & Sons.

21) The Commr has already solicited instructions in his letter dt 17.12.24 in regard to the deductibility or otherwise of the royalty paid for arriving at the assessable income of the Gold mining Companies.

N. B.-- Should routine notes be written on small slips, the notes must de copied, on slips pasted on this form.

D/880—GPB—1,50 000—2 5-24

General and Revenue Secretariat.

File No. 2262 of 19 2639

Serial No.

22 A reply to the Comm^r was prepared but it did not issue. Re-subd. with the draft then approved for orders.

WW 28/5 Rev Secy

23 Dept to resubl

24 The draft may issue after submission to Govt as this is an important matter.

7026 3/3

25 On this question as to whether income tax is to be paid on royalty on the output of mines, I am in entire agreement with the views expressed by Mr. Allan Shirras in his note, Dept, Mr Rajapura on other files. ~~[illegible]~~ Then the value of the output for mines is income, & that royalty paid on it is not income, but income earned on behalf of the owner. Expenditure for earning income will probably become clear if the analogy of the Washing Carpet, ~~[illegible]~~ is borne in mind, viz that with every wash, the size of the Carpet becomes gradually smaller, & with every output the size of the mines becomes smaller. & the mines are steadily engaged in the process of realising potential wealth to income by extraction of minerals, & so the whole ~~[illegible]~~

Similar

NOTE—Contn. Sheet

Serial No.

is income, & ihs the 5 p.c. royalty on the [redacted] output that is taxable; & not merely the 2½ p.c. on dividends. Even if the Company does not declare dividends we are losing our wealth in the form of income. When Minerals are Extracted, & as ihs the Companies that are turning this wealth into income for them annually, we are entitled to assess them on the royalty payable. If the mines belonged to a private person, the 5 per cent royalty that he gets would be liable to income tax, [redacted]; & the fact that Govt are the owners makes no difference in the liability to income tax of the portion of income paid by the Companies to the owners. Of course, ultimately, ihs is an additional levy, over & above what is intended

4/3/25

DEWAS
4 MAR 1925
Reg. 6460

D Swan
26

Igot this file back as a copy of the Advocate General's opinion was req; I find that the Enclosure portion of his opinion is the same, over before we levy royalty on 5 p.c. it is very best to ascertain our Ruler's decision

Drafting & issue

D Swan

27

Agree

7/3

5/3

ieral and Revenue Secretariat.

File No. 1697/21 of 19 .

Serial No.	
1	H 5033 of 11.8.25 to The Comm^r of I.T. stating that no deduction can be allowed on royalty paid on dividends & that assessment has to be made on income inclusive of royalty —

3459

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Subd.

1 The file relating to the ~~assessment of the~~ instructions issued to the Commr of Income Tax in regard to the assessment of Gold mining Companies on the royalty paid as dividends is put up.

2 The questions relating to the assessment of messrs John Taylor sons & the levying of income tax on Mining royalty paid by Govt have been ordered to be discussed in Council & the communication now issued in regard to the latter ~~may~~ to the Commr may be withdrawn in view of the fact that the case is pending before the High Court. It is understood that the hearing of this case is posted to the 23rd instt.

17/3 3 In the D.O. letter the Govt was requested to defer taking action on this office letter of 11.3.25 The Govt is now proposed to withdraw this letter

2nd member

17/3/25

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

3459/17/3

G.R.S. III—31

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

This may also be considered in Council on 24th if Deman approves.

10/3/25

18/3.

Deman 5-

6 Ch. Ly

20/3/25

21.3.

2 ors.

3.72

C.S.

21-3-25

VIAN'S OFFICE,
RECD. ON 18. MAR. 1925
Reg. No. 6881

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form

Dividends paid by the Gold Mining Companies for the year 1923.

Mysore	£	137250
Nandidrug		35375
Ooregaum		84154- 8 - 0
Champion Reefs		-
Balghat		12468- 0 - 0
		15396 -15 - 0
Total		284644 - 3 - 0

at 2½ Per cent the ~~amount~~ Royalty due will be £ 7115 or Rs.106725.

Income Tax at 1 anna	106725 annas.	
Super Tax at 1 anna	106725 annas	
Total	213450 annas	or Rs.13340 nearly.

Dividends paid by the Gold Mining Companies for the year 1923.

3460
N

Mysore	£	137250
Nandidrug		35375
Ooregaum		84154- 8 - 0
Champion Reefs		-
Balghat		12468- 0 - 0
		15396- 15- 0
Total		284644- 3- 0

At 2½ per cent the Royalty due will be £ 7115 or Rs.106725.

Income Tax at 1 anna 106725 annas.

Super Tax at 1 anna 106725 annas.

Total 213450 annas or Rs.13,340 nearly.

The amount of income tax & Super tax on royalty on dividends declared by Gold Mining Companies (2½ p.c.) Calculated on the amount of dividends declared in 1923 is Rs 13,000.. This may be taken as representing the average annual income tax on this item

This information was required by 2nd member today.

7485
18/3/25.

2nd member

18/3/25

Please put up with the file for consideration in Tuesday's Council

Dewan

19.3.25

19/3/25

Serial No.

7 The question whether incometax is leviable on the amount of royalty paid by Mining Companies has been considered in the collection put up. The question is also pending consideration before the Chief Court on a reference made at the instance of the United Steel Co., Shimoga. The legal opinion obtained by Government is to the effect that incometax is leviable. Royalty is paid by the Gold Mining Companies in 2 forms: (i) 5 per cent on the value of the gold produced and (2) 2½ per cent on the divisible profits. When the Central Board of Revenue in British India was consulted as regards the liability of royalty to incometax; they replied that, if it was taken as a share of profit, it was liable to incometax and not otherwise. In this view, a draft was put up to the Income Tax Commissioner requesting him to take steps to assess that portion of the royalty paid by the Gold Mining Coys., which is paid by them as a percentage on the profits received by them. But this letter has been withdrawn as directed by the Member.

P

8 The point for consideration now is what further action should be taken in the matter, pending adjudication of the case before the Chief Court. This matter was considered in Council and I was understood that the decision was that the Incometax Commissioner may be requested to issue notices to companies to show cause why the assessment made by the Deputy Commissioner should not be revised to the extent of making the royalty amount paid by them also

Please see note below hm

Serial No.

liable to incometax. These proceedings might go on, pending the disposal of the case before the Chief Court, the revised order being made on the basis of the decision of the Chief Court. I have, however, not got any recorded decision of the Council on this matter up to date. In these circumstances, I request ~~for~~ orders as to what further action should be taken in the matter.

Ke 17/4

If M/S Chief Secy may kindly mention Council opinion

17/4

8420 17/4

Lee 17/4

If Ch. Sy and Comptr

Ke 18/4

29 18/4

15 The agenda of the Council Meeting of the 26th March 1925 contained two items under the subject of Income-tax, as follows:-

(a) Question of levying Super-tax on Companies carrying on business both in Mysore and in British India.

(b) Assessment of Messrs. John Taylor & Sons, to Income-tax.

16 Though the present file relating to Income-tax on Royalties paid, was linked along with the above two files, and the point was also referred to in the course of discussion, no note of any ~~such~~ decision was ordered to be recorded. Such

Serial No.

note was confined to the two items (a) & (b) on the agenda. Hence, the present case would seem to be one for orders now.

Rev Secy, info Comptr Genl.

20.4.25.

2nd member

20.4

I The question of levying income tax on Royalty is an important one. I have always been of opinion that I agree with the Ld Legl Mem that Royalty may be levied. I see no harm in confidentially instructing the Comm & do so pending orders of the Chief Comm, but as the question is an important one, submit to Govt.

8420 21/4/25

21/4/25

Dewan I shall be loth to take the chance of losing the year's arrears while awaiting decision of the Chief Comr

21/4

8549 22/4

2nd member I am afraid this will be so but before 22.4 — file to Govan Bahadur Sahib please note approx amount involved.

Mr Venkat Rao 23/4

NOTE–Contn. Sheet

JT File No. 40 of 1924 | General and Revenue Secretariat.

Serial No.

16. The approximate amount of the income & superfaxes leviable on the royalty ~~on~~ paid by Govt Mining Companies will be about Rs 13,000 on royalty on dividends and about Rs 1½ lakhs on Royalty on the value of gold produced.

8600/24/4

17 Seen before sent 24/4/25

Dewan 2 Members 24/4/25

18 Keep for consultation

8 A 24.4

19 Draft sent 25/4/25

20 Submitted with a draft D.O. 27/4/25

Rev Secy 27/4/25

21 Draft returned approved

22 Lapse 29/4/25

8704/28/4

23 Submitted for approval & open issue 29/4/25

Dewan 24 Approved 30/4

25 Issue 1/5/25

B

Serial No.	
2	Fc 5119 & 14.3.25 to the Comm^r of I.T., ~~Stating that~~ requesting him to defer taking action on the G.O. Fc 5033 & 11.3.25. -
3.	D.O. No: Fc 5922 & 1.5.25 Stating that instructions may be issued making royalty also leviable to income tax & that steps may be taken for assessing ~~Fch~~ the Gold Mining Companies for the current year & to re-assess them for the year 1923-24 — To the Comm^r. I.T.

NOTE—Contn. Sheet

IT File No. 40 W&T of 1924

General and Revenue Secretariat.

From

The Comm^r of Income Tax

No. C 325 of 22.5.25

Serial No.

Forwards for instructions a copy of the Asst Dy. Comm^r's letter feeling doubtful about his authority to revise the assessment under Section 34 or 35 of the Ry^n Act supposing that the Comm^r may take action under Section 33.

According to Section 34 of the I.T. Ry^n, assessment proceedings may be taken for assessing income that has escaped assessment within one year from the end of the year in which the income so escaped assessment. In the case of the Mining Companies the amount of royalty which should be regarded as part of the assessee's income has escaped assessment & has now to be assessed to tax.

References is invited to the notes on page 378 of D. Mayer's I.T. manual in the matter. The L.D. Secy may be consulted in the matter. Submd.

KW 26/5/25 (Rev Secy)

26/5/25

This is a case of Sl Capts

Govt. Govt. does is a mistake

section of Act. Sec 34 (read

Sec 35 seems to which

applies) to mistakes of other kinds—

9990 27/5

27.5.25

II M

The power taken by the DI is that a notice

General and Revenue Secretariat.

File No. 1882

of 19 .

Serial No

Our cannot compel him to revise his own order. The question is that personal decision of Chief Comr. on a matter of opinion that S/C in acting as taxable, as fees for the land that he has followed, as under fees titles fees therein has escaped assessment to tax. Fees & leased alone. The question that S.C. considers that Govt. view is wrong wishes to check in his own opinion. He S.C. defends Govt. as to.

Please consider. Govt Legal Legis Dept. Mr. Nalapat who is delegated. Send a suitable reply

Two points arise for consideration in this case, viz,

(1) Whether the Deputy Commr has authority to revise the order of assessment after once having held that "royalty" was not assessable to income tax and Deputy Commr has concluded [illegible] whether he has authority.

NOTE—Contn. Sheet

Serial No.

(2) whether the Board of the Commr of Income-tax, as superior appellate authorities over the Deputy Commr, can compel the Deputy Commr to revise his own order.

The power conferred under Secs 34 and 35 of the Regulation is of the nature of a review of an order already passed, (though not a general power of review over all orders passed) upon certain circumstances viz when any income profits has escaped assessment or when there is a mistake patent from the records. It is apparent that this only with reference to an order already passed, that action under Secs 34 & 35 can be taken. If the Deputy has reason to believe & finds that for any reason income, profits, or gains chargeable to income tax has escaped assessment he may take steps to assess & reassess the same. Section 34 is based on the decisions quoted in the margin. The Deputy Commr can say that his view about the taxability or otherwise of royalty was not correct, and that royalty has escaped assessment; or that there was a mistake about the deduction given as regards royalty & and proceed to rectify the mistake under Sec 35. All reviews are based on some such mistake or erroneous interpretation or construction

R #s Kensington Income tax Commissioners, (1913) 3 K.B. 870. & S.C. (1914) 3 K.B. 429.

NOTE—Contn. Sheet

Serial No

of law, was a misconception of fact. Nowhere was there anything to prevent the Deputy Commissioner acting under Secs 34 & 35, if he chose to do so, in spite of his having decided the question in a particular way before. If the Commissioner was unwilling or [illegible] to pass an appeal otherwise he can be compelled to proceed under Secs 34 & 35. An order of assessment is under Sec 23 of the Regulations and is a judicial order against which an appeal is provided for in Sec 30. The Commissioner & the Govt have further powers of review & revision under Secs 33 & 59 A. A normal order can be upset or revised only in appeal or revision by the superior authority or by the authority which passed the order in review. Both under the Civil law and the Criminal law, the position is the same. The authority which passed an order cannot be compelled directly to revise such order, & even the order is wrong etc. Indirectly, either can be done by remanding a suit under the Civil law & sending back a case for retrial under the Criminal law. There is another method in the Civil law, whereby a subordinate Court acts on the advice of the Superior Court when a point is referred to the latter

NOTE—Contn. Sheet

Serial No.

Court for opinion, when the process is followed; but in this case the order will have been passed. There is no provision for referring any case before the Commissioner in the Income-tax Regulation and even if the Commissioner may be taken as a reference, the opinion of High Court thereon, as the law to be followed, has the position is not better; as the Regulation does not provide for any reference to Court and as the Deputy Commissioner has decided the question already in one way in the case, the Deputy Commissioner cannot be legally compelled to review his order. Two courses are open now (1) to make it plain to the Deputy Commissioner that this previous decision does not preclude him from proceeding under Sec 34 on the ground that there has been an escapement of assessment, or under Sec 35 on the ground that there has been a patent mistake in assessment.

(2) to call for the record & ask the Commissioner to do so and proceed under Sec 59 A or 33 as the case may be. In any case, I think action is necessary, as notice to the Company has to go within the year which is drawing to a close & period the record will be barred once notice is served on the Company. It does not matter when the proceedings terminate

(H.L. Secy)

Calcutta
29.5.

* If Govt had decided in any previous case of the kind, he was bound to follow the ruling; but this is the first case & the finish case is not present.

For orders

Note—Contn Sheet

General and Revenue Secretariat. | File No. | of 19

Serial No

11 May

D.C may be informed at once that in the opinion of Govt his previous decision does not preclude him from proceeding under Sec 34 on the ground that 'Royalty' has escaped assmt or under Sec 35 on the ground that there has been a mistake. Submit to Diwan before issue.

Sec
31/5

Draft at once

mad
1/6/25

Subd with a draft for subn to Diwan

WBRao 1/6 after approval mad 4/6/25

Rev Secy

11 May Sec 4/6/25 4/6

Secy

9821 Sec 4/6

Secy

Secy's note 4/6

Secy

5 To.

The Commr of Income Tax

n.c 7L 14 dt 6.6.25

Intimates that the Dy. Commr dt may be told that assessment proceedings be taken under Sections 34 or 35 of the

B

NOTE.—Contn. Sheet

27455

I T

No. C. 325/24-25

Enc. one

OFFICE OF THE COMMISSIONER OF INCOME-TAX IN MYSORE

Bangalore 17th December 1924.

2262

FROM

V. R. THYAGARAJA AIYAR, ESQ., M.A.,
COMMISSIONER OF INCOME-TAX IN MYSORE.

To

K. V. Anantharaman, Esq., B.A.,
Secretary to the Government of Mysore,
Revenue Department, Bangalore.

Sir,

In enclosing herewith a copy of D.O. letter No. I.C.130/24-25 dated the 4th December 1924 from the Deputy Commissioner of Income Tax, Kolar District intimating that he has assessed the Gold Mining Companies for the current year, I have the honour to request the favour of orders of Government early on the question as to whether Royalties paid to Government are to be regarded as a deductible item of expenditure in arriving at the income from business under section 10 of the Regulation.

2. I may add that a similar question referred by me to the Chief Court, under section 66 of the Regulation

at the instance of the United Steel Companies, Ltd., Shimoga is still pending disposal.

3. Reference is also invited to my letter No. C.200/24-25 dated 16th December 1924 reporting the practice prevailing in this matter in British India.

I have the honour to be,
Sir,
Your most obedient servant,

Commissioner of Income Tax. 17/12/24

D.O. No. I.C.130/24-25 dated the 4th December 1924 from the Deputy Commissioner of Income Tax, Kolar District; to the Commissioner of Income Tax in Mysore.

As I did not receive your reply to my D.O. letter No. I.C.130/24-25 dated 3rd November 1924 regarding the decision of the Chief Court on the question of taxing for income-tax the royalty payable to Government, I have passed orders to-day on the Gold Mining Companies' cases including the Kolar Brick Making Co. The total amount of tax assessed amounts to Rs 8,82,629-15-0 for the year 1924-25. The working of the Champion Reef Company resulted in a loss and there was therefore no tax to be levied from that Company. I have yet to tax the Kolar Mines Power Station Ltd. and the Nobel's Explosives Company whose cases are not yet ready. They are however small concerns.

I wish to add that as the question is yet sub judice I have followed the mamool and have not taxed the income set apart by the Companies for royalty payable to Government, but as the matter concerns the revenue interests of Government, it is open to you to take action to revise my assessment should you consider

such

such a course necessary. I could not further delay passing orders on the cases as every day's delay means appreciable loss to Government.

--:0:--

Copy.

17/12/24

17.12.24.

Letter No. 5933, dated the 8th December 1924, from the Secretary, Central Board of Revenue, Government of India, Delhi, to the Commissioner of Income-tax, Mysore

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Indian Income-tax Act - Section 10 (2)ix - Mining Royalties deduction of (as business expenses) admissibility of - Your letter No. 200/24-25 of 18/22nd November 1924.

"In reply to your letter quoted above, I am directed to say that if the royalty in question is based on mere output i.e., has to be paid irrespective of whether the company makes a profit or not, it would be treated in British India as an expenditure incurred solely for the purpose of earning such profits or gains within the meaning of section 10 (2)ix of the Indian Income-tax Act 1922. If, on the other hand, the royalty depends in any manner upon the profits made by the Company such royalty would not be considered to be expenditure incurred for the purpose of earning such profits and would therefore be not allowed as a deduction from the income.

Copy.

Government Advocate.

2299

GOVERNMENT OF MYSORE

D. O.

Government Advocate's Office,
BANGALORE, 17th Dec. 1924.

My dear Sir,

As desired by you in person, I am sending herewith, for your kind information, a copy of - letter No. 5933, dated the 8th December 1924, from the Secretary, Central Board of Revenue, Government of India, Delhi, to the Commissioner of Income-tax in Mysore, Bangalore, on the question whether Royalties paid by Mining Companies should be considered as revenue expenditure or not.

Yours sincerely,

K. R. Srinivasa Iyengar, Esq., M.A.,
Member of Council, BANGALORE.

Letter No.5933 dated the 8th December 1924 from the Secretary, Central Board of Revenue, Government of India, Delhi, to the Commissioner of Income Tax, Mysore.

Indian Income-tax Act- Section 10 (2) ix- Mining Royalties deduction of (as business expenses) admissibility of- Your letter No.200/24-25 of 18/22nd November 1924.

In reply to your letter quoted above, I am directed to say that if the royalty in question is based on mere output i.e. has to be paid irrespective of whether the company makes a profit or not, it would be treated in British India as an expenditure incurred solely for the purpose of earning such profits or gains within the meaning of Section 10 (2) ix of the Indian Income-tax Act,1922. If on the other hand, the royalty depends in any manner upon the profits made by the Company such royalty would not be considered to be expenditure incurred for the purpose of earning such profits and would therefore be not allowed as a deduction from the income.

G. R. S. VI—G/32]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the 191 .

Date of issue 11/3/25

Signed by M. A.

Section

File No. 40-24

Serial No 1

No. F. 50/17

The Comm. of Income Tax

Sir,

Adverting to your letter No. C. 325/24-25 of the 17th December 1924 in regard to the assessment of Income Tax of the Income of the Kolar Gold Mining Companies for the current year, I am directed to state that the general question as to whether royalties paid to Govt

over.

should or should not be
regarded as a deductible
item of expenditure in computing
income from business under
Section 10 of the I.T. Act as
stated by you before
the Chief Court at the
instance of the United Steel
Companies Ltd. Bhowoji, and
its decision may be awaited.
I am however to add that
in accordance with the
practice prevailing in Bombay
as stated in your letter No. C200/24-25
dt. 16.12.24, the royalty cannot
no deduction can be allowed as
royalty paid as dividends and
assessment has therefore to be made
on the income of the Companies including
this royalty. I am to request you to
issue notice under section 34 of
the Companies according to the current year
and also to reassess them under Section 34 for
1923-24 also, pending the decision of the Chief Court
on the general question of the income to which the assessee
is entitled. Later on

List of enclosures.

Copied by

Examined by

General and Revenue Secretariat,

D. O. No Fl.5119/I.T.40-24-2 Bangalore 14th March 1925.

I.T. 40-24-2

Dear Sir,

I am desired to request you to defer taking action on this Office letter No.Fl.5033/I.T.40-24-1 dated the 11th March 1925 to you until you hear from me -- again in the matter.

Yours sincerely,

14/3/25

To

V.R. Thyagaraja Aiyar, Esq., M.A.,
Commissioner of Income Tax in Mysore,
Bangalore.

[pp.F.VI-G1.]

SUBJECT

Diary No. of letter replied to

General and Revenue Secretariat

( )

, the 192

Date of issue 1.5.25

Signed by M. M. A. Rugachey

List of enclosures

Copied by

Examined by

Section 57

File No. 40-24

Serial No. 3

No. Strictly confidential
D.C. H 5922

To

Dear Sir,

In supersession of this office D.O. letter no. H 5117/I.T. & I. 14th March 1925 requisitioning you to defer taking action in regard to assessing the Gold mining Companies for the K.G.F. on the amount of royalty paid by them, I am desired to state as follows:

According to the terms of the mining leases, royalty on gold is levied in two forms:-

(1) at 5 per cent on the value

over

proceeds of all gold metallic ores; &
2) 2½ percent on the amount of
all dividends from whatever
source derived as & when declared
and made payable by the lessees
to the Shareholders

If the Govt. of India practice
(referred in your letter no. C 200 &
16.12.24) is to be followed, a
distinction has to be observed in the
case of the 5 percent royalty
levied but not on the 2½ percent
payable on dividends declared
by the mining companies.

The Govt. are of opinion
that the said practice is not free
from doubt, as the facts among others that
complete ownership of the lands
are not taken but only such
ownership as is necessary to
extract gold so long as the land
yields gold and that the price
paid for this limited or partial
ownership is paid annually for
a fixed period instead of once
for all. Even that be so

G. R. S. G/33]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

expenditure falls under the class capital which is not a deductible item of expenditure under the I.T. Rule. They think that it is not necessary to wait for the decision of the Chief Court on the general question referred to it and that necessary steps may be taken to assess the Companies making the royalty amount ~~to~~ liable to tax.

I am therefore to request that needful instructions may be issued ~~to the necessary officer~~ for assessing the Companies for the current year as indicated above ~~to this~~ allowing any deduction on account of Royalty paid both on the value of coal & on dividends declared and also to reassess them ~~under~~ on this basis under Section 34 of the I.T. Rule for the year 1923-4.

Yours faithfully

&

WD 2833—GPS—1,00,000—23-7-20

V.N. 27/7/25

To.

V. R. Jagannadha Iyer & Co
Coal Traders

4809

In Reply Refer to
No. C.325
Encls. One.

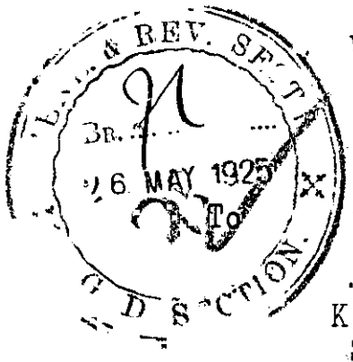
Office of the Commissioner of Income-tax
In Mysore,

Bangalore, 22nd M a y *1925*,

GT 40-24-4

4682

From:-



V. R. Thyagaraja Iyer, Esq., M.A.,
Commissioner of Income Tax in Mysore.

4423

To

K. V. Ananthraman, Esq., B.A.,
Secretary to the Government of Mysore,
Revenue Department Bangalore.

Sir,

With reference to your D. O. No.Fl.5922/I.T.40-24-3 dated 1st May 1925, re: the re-assessment of Mining Cos., of Kolar Gold Fields, I have the honour to forward herewith a copy of letter No.I.C.351/24-25 dated 17th May 1925, received from the Deputy Commissioner, Kolar District.

2. It will be seen from the said letter that the Deputy Commissioner feels doubtful about his authority to revise the assessment under Section 34 or 35 of the Regulation and suggests that I may take action under Section 33 of the Regulation. I therefore request the instructions of Government in the matter.

I have the honour to be,

Sir,

Your most obedient servant,

Head Quarters Assistant to the
Commissioner of Income Tax
in Mysore.
(Absent from Station)

KGS/22-5

1925, Of. Income Tax

Letter No.I.C.351/24-25 dated 17th May from the Deputy Commissioner, Kolar District, to the Commissioner of Income Tax in Mysore, Bangalore.

@@@@@@@@@@

With reference to your memo No.C.325/24-25 dated the 2nd May 1925 forwarding a copy of Revenue Secretary's D.O. Letter No. Fl.5922/I.T. 40-24-3 dated 1st May 1925, and requesting me to re-assess the Mining Companies under section 34 of the Income Tax Regulation, 1923, on the amount of royalty on gold, I have the honour to state that I have already, in my D.O. letter No.I.C.130 /24-25 dated 3rd November 1924, pointed out that it is extremely doubtful whether under section 34 or 35 of the Income Tax Regulation I have the authority to revise the assessment order after holding such royalty was not liable to assessment. The income has not "escaped " assessment nor has the same been assessed at too low a rate; there is no mistake apparent from the record of assessment nor have the Companies brought any mistake to my notice. In the above circumstances and in view of the large revenue interest involved I would suggest for your consideration whether it would not be more legal and correct if you should take action under section 33 of the Income Tax Regulation.

2. The favour of an early reply is requested.

=========

" C O P Y "

For Commissioner of Income Tax
in Mysore.

KGS/xx-5

G. R. S. G/83]

GENERAL AND REVENUE SECRETARIAT

(Continuation sheet draft form.)

I.T 40.24-5

The Comm^r of Income Tax
in Mysore

Sir,

Adverting to your letter no. C 325 of 22nd May 1925 in regard to the reassessment of the Kolar Gold Fields Mining Companies under Section 34 of the I.T. Ry^n on the amount of royalty on gold, I am directed to state that the Dy. Comm^r of Income Tax, Kolar may be informed that in the opinion of Govt his previous decision does not preclude him from proceeding under Section 34 on the ground that royalty has escaped assessment or under Section 35 on the ground that ~~royalty has~~ there has been a patent mistake in assessment

~~2. I am to request that~~

WL 2230—GPB—1,00,000—23-7-20

immediate action may be taken, as
notice to the Company has to go before
the close of the official year, as otherwise
the remedy will be barred."

I have etc
Sd/-
Secy to Govt
Rev. Deptt

Nov
4/6/25

NV

2. It is necessary
to take prompt action
in the matter so
that there may be
no loss of revenue
to Govt for want of
timely action as
pointed out

G. R. S. VI–G-32]

B50—WD 0527

SUBJECT

Diary No. of letter replied to

General and Revenue Secretariat

( )

, the *192* .

Date of issue 20.1.25

Signed by H.M.A.R.

Section

File No.

Serial No.

No. H 4141

To The Govt. Advocate in Mysore

Dear Sir,

I am desired to request you to be so good as to intimate the date to which hearing of the case of the I.T. reference of the United Steel Companys, Branch, Shimoga has been posted for hearing in the Chief Court. An favourable early reply is requested.

Yours Sincerely

mad

20/1/25

over

D. O. No. 53

1492

GOVERNMENT ADVOCATE'S CHAMBERS
PUBLIC OFFICES,
Bangalore... 21st January 1925

Dear Sir,

Referring to your D. O. letter No. Fl. 4141, dated the 20th instant, I write to state - that Civil Referred Case No. 3 of 1924-25, on the file of the Chief Court of Mysore, (Income-tax case relating to the assessment of the United Steel Companies, Limited., Shimoga) stands posted for hearing to the 11th February 1925.

Yours sincerely,

K. Narasimhachar

Ag: for information.
Please submit with the Connected file.
23/1

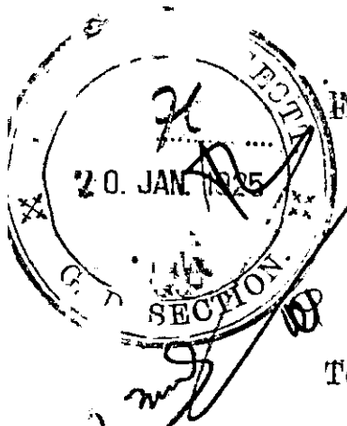
M. A. Rangachar, Esq., B.A.,
Assistant Secretary to Government,
Gen. & Rev. Sectt., BANGALORE.

31312

In reply refer to
No C.200
24—25
Enc. nil

OFFICE OF THE COMMISSIONER OF INCOME-TAX IN MYSORE,

Bangalore, 19th January 192 5.



DIARY NO. 4639
19 — 19
Section.
File No.

FROM

V. R. Thyagaraja Iyer, Esq., M.A.,
~~CHANDY, Esq.~~,
Commissioner of Income-Tax in Mysore.

To

K. V. Anantharaman, Esq., B.A.,
Secretary to the Government of Mysore,
Revenue Department, Bangalore.

Sir,

Civil Referred Case No. 3 of 1924-25 re: assessment of the United Steel Companies, Ltd., Shimoga.

In continuation of this office letter No. C.200 of 24-25 dated the 16th December 1924, forwarding a copy of letter from the Secretary, Central Board of Revenue Delhi, regarding the treatment of Royalties in British India for Income Tax purposes, I have the honour to append below for information a copy of letter No.34/24 dated 15th January 1925 received from the Commissioner of Income Tax, Madras in the matter.

"From the information at present available it appears that there is one Mica Mining Company in this Province which pays royalty direct to Government. The royalty paid is allowed as a deduction in computing the company's income for income-tax purposes under Section 10(2)(ix) of the Income Tax Act 19[illegible]"

I have the honour to be,
Sir,
Your most obedient servant,

Assistant Commissioner,
For Commissioner of Income Tax.
(Absent from Headquarters).